

AMENDED IN ASSEMBLY MAY 6, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 2280

Introduced by Assembly Members Saldana and Caballero

February 21, 2008

An act to amend Section 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL’S DIGEST

AB 2280, as amended, Saldana. Density bonus.

The Planning and Zoning Law requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus and other incentives or concessions for the production of lower income housing units or the donation of land within the development if the developer, among other things, agrees to construct a specified percentage of units for low-, very low, or moderate-income households or qualifying residents.

This bill would require, for qualifying senior citizen housing developments, as defined, that 100% of the units in the development be for senior citizens.

~~The bill would delete a provision authorizing the seller to retain the value of any improvements, the downpayment, and the seller’s proportionate share of appreciation, upon resale of low- and very low income units used to qualify for a density bonus, incentive, or concession.~~

The bill would require a city, county, or city and county to grant a concession or incentive requested by the applicant under existing law unless the city, county, or city and county makes a written finding,

based upon substantial evidence, that, among other things, the concession or incentive would be contrary to state or federal law.

The bill would revise the percentage of lower income, very low income, and moderate income households required for qualification for incentives and concessions.

~~The bill would delete provisions requiring a court to award the plaintiff reasonable attorney's fees and costs of suit if the court finds that a refusal to grant a requested density bonus, incentive, or concession, or a waiver or reduction of development standards, is in violation of existing law.~~

The bill would delete a requirement that an applicant for a waiver or reduction of development standards show that the waiver or modification is necessary to make proposed housing units economically feasible.

The bill would require, as a condition for the granting of a density bonus to a developer in exchange for donating land to a city, county, or city and county for very low income housing, that the local agency identify and approve a source of funding for the very low income units.

The bill would specify that, for the purposes of these provisions of existing law, a concession or incentive does not include elimination or modification of the public review process for development.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65915 of the Government Code is
2 amended to read:
3 65915. (a) A city, county, or city and county shall comply
4 with the provisions of this section. An applicant may seek a density
5 bonus for a housing development with five or more units. An
6 application for a density bonus may be submitted only when the
7 application for the initial discretionary approval for the housing
8 ~~element~~ *development* is submitted. A city, county, and city or
9 county shall grant a density bonus in accordance with the
10 provisions of this section and, when a density bonus is requested,
11 shall also provide the applicant incentives or concessions for the
12 production of housing units and child care facilities as prescribed
13 in this section. All cities, counties, or cities and counties shall adopt
14 an ordinance that specifies how compliance with this section will
15 be implemented.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and, if a density bonus is requested, incentives or concessions, as described in subdivision (d), when an applicant for a housing development voluntarily agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) One hundred percent of the total units of a housing development are a senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil Code, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development as defined in Section 1351 of the Civil Code for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).

(3) For the purposes of this section, “total units” or “total dwelling units” does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low- and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

1 Rents for the lower income density bonus units shall be set at an
2 affordable rent as defined in Section 50053 of the Health and Safety
3 Code. Owner-occupied units shall be available at an affordable
4 housing cost as defined in Section 50052.5 of the Health and Safety
5 Code.

6 (2) An applicant shall agree to, and the city, county, or city and
7 county shall ensure that, the initial occupant of the
8 moderate-income units that are directly related to the receipt of
9 the density bonus in the common interest development, as defined
10 in Section 1351 of the Civil Code, are persons and families of
11 moderate income, as defined in Section 50093 of the Health and
12 Safety Code, and that the units are offered at an affordable housing
13 cost, as that cost is defined in Section 50052.5 of the Health and
14 Safety Code. The local government shall enforce an equity-sharing
15 agreement, unless it is in conflict with the requirements of another
16 public funding source or law. The following apply to the
17 equity-sharing agreement:

18 (A) Upon resale, the *seller of the unit shall retain the value of*
19 *any improvements, the downpayment, and the seller's*
20 *proportionate share of appreciation. The* local government shall
21 recapture any initial subsidy, as defined in subparagraph (B), and
22 its proportionate share of appreciation, as defined in subparagraph
23 (C), which amount shall be used within five years for any of the
24 purposes described in subdivision (e) of Section 33334.2 of the
25 Health and Safety Code that promote homeownership.

26 (B) For purposes of this subdivision, the local government's
27 initial subsidy shall be equal to the fair market value of the home
28 at the time of initial sale minus the initial sale price to the
29 moderate-income household, plus the amount of any downpayment
30 assistance or mortgage assistance. If upon resale the market value
31 is lower than the initial market value, then the value at the time of
32 the resale shall be used as the initial market value.

33 (C) For purposes of this subdivision, the local government's
34 proportionate share of appreciation shall be equal to the ratio of
35 the local government's initial subsidy to the fair market value of
36 the home at the time of initial sale.

37 (d) (1) An applicant for a density bonus pursuant to subdivision
38 (b) may submit to a city, county, or city and county a proposal for
39 the specific incentives or concessions that the applicant requests
40 pursuant to this section, and may request a meeting with the city,

1 county, or city and county. A proposal shall be submitted
2 concurrently with the application for a density bonus. The city,
3 county, or city and county shall grant the concession or incentive
4 requested by the applicant unless the city, county, or city and
5 county makes a written finding, based upon substantial evidence,
6 of any of the following:

7 (A) The concession or incentive is not required in order to
8 provide for affordable housing costs, as defined in Section 50052.5
9 of the Health and Safety Code, or for rents for the targeted units
10 to be set as specified in subdivision (c).

11 (B) The concession or incentive would have a specific adverse
12 impact, as defined in paragraph (2) of subdivision (d) of Section
13 65589.5, upon public health and safety or the physical environment
14 or on any real property that is listed in the California Register of
15 Historical Resources and for which there is no feasible method to
16 satisfactorily mitigate or avoid the specific adverse impact without
17 rendering the development unaffordable to low- and
18 moderate-income households.

19 (C) The concession or incentive would be contrary to state or
20 federal law.

21 (2) The applicant shall receive the following number of
22 incentives or concessions:

23 (A) One incentive or concession for projects that include at least
24 20 percent of the total units for lower income households, at least
25 15 percent for very low income households, or at least 20 percent
26 for persons and families of moderate income in a common interest
27 development.

28 (B) Two incentives or concessions for projects that include at
29 least 30 percent of the total units for lower income households, at
30 least 20 percent for very low income households, or at least 30
31 percent for persons and families of moderate income in a common
32 interest development.

33 (C) Three incentives or concessions for projects that include at
34 least 40 percent of the total units for lower income households, at
35 least 25 percent for very low income households, or at least 40
36 percent for persons and families of moderate income in a common
37 interest development.

38 (3) The applicant may initiate judicial proceedings if the city,
39 county, or city and county refuses to grant a requested density
40 bonus, incentive, or concession. *If a court finds that the refusal to*

1 *grant a requested density bonus, incentive, or concession is in*
2 *violation of this section, the court shall award the plaintiff*
3 *reasonable attorney's fees and costs of suit.* Nothing in this
4 subdivision shall be interpreted to require a local government to
5 grant an incentive or concession that has a specific, adverse impact,
6 as defined in paragraph (2) of subdivision (d) of Section 65589.5,
7 upon health, safety, or the physical environment, and for which
8 there is no feasible method to satisfactorily mitigate or avoid the
9 specific adverse impact. Nothing in this subdivision shall be
10 interpreted to require a local government to grant an incentive or
11 concession that would have an adverse impact on any real property
12 that is listed in the California Register of Historical Resources.
13 The city, county, or city and county shall establish procedures for
14 carrying out this section, that shall include legislative body
15 approval of the means of compliance with this section.

16 (e) In no case may a city, county, or city and county apply any
17 development standard that will have the effect of physically
18 precluding the construction of a development meeting the criteria
19 of subdivision (b) at the densities or with the concessions or
20 incentives permitted by this section. An applicant may submit to
21 a city, county, or city and county a proposal for the waiver or
22 reduction of development standards that will have the effect of
23 physically precluding the construction of a development meeting
24 the criteria of subdivision (b) at the densities or with the
25 concessions or incentives permitted under this section, and may
26 request a meeting with the city, county, or city and county. *If a*
27 *court finds that the refusal to grant a waiver or reduction of*
28 *development standards is in violation of this section, the court*
29 *shall award the plaintiff reasonable attorney's fees and costs of*
30 *suit.* Nothing in this subdivision shall be interpreted to require a
31 local government to waive or reduce development standards if the
32 waiver or reduction would have a specific, adverse impact, as
33 defined in paragraph (2) of subdivision (d) of Section 65589.5,
34 upon health, safety, or the physical environment, and for which
35 there is no feasible method to satisfactorily mitigate or avoid the
36 specific adverse impact. Nothing in this subdivision shall be
37 interpreted to require a local government to waive or reduce
38 development standards that would have an adverse impact on any
39 real property that is listed in the California Register of Historical
40 Resources, or to grant any waiver or reduction that would be

contrary to state or federal law. The waiver or reduction of development standards shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. However, if the housing development for which a waiver or reduction of development standards is requested requires a discretionary approval, any request for the waiver or reduction shall be reviewed concurrently with the required discretionary approval.

(f) For the purposes of this chapter, “density bonus” means a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5

Percentage Very Low Income Units	Percentage Density Bonus
7	25
8	27.5
9	30
10	32.5
11	35

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29

Percentage Moderate-Income Units	Percentage Density Bonus
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. However, if the housing development for which a density bonus is requested requires a discretionary approval, any request for the density bonus for that housing development shall be reviewed concurrently with the required discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28

	Percentage Very Low Income	Percentage Density Bonus
1		
2	24	29
3	25	30
4	26	31
5	27	32
6	28	33
7	29	34
8	30	35
9		

10 (2) This increase shall be in addition to any increase in density
 11 mandated by subdivision (b), up to a maximum combined mandated
 12 density increase of 35 percent if an applicant seeks an increase
 13 pursuant to both this subdivision and subdivision (b). All density
 14 calculations resulting in fractional units shall be rounded up to the
 15 next whole number. Nothing in this subdivision shall be construed
 16 to enlarge or diminish the authority of a city, county, or city and
 17 county to require a developer to donate land as a condition of
 18 development. An applicant shall be eligible for the increased
 19 density bonus described in this subdivision if all of the following
 20 conditions are met:

21 (A) The applicant donates and transfers the land no later than
 22 the date of approval of the final subdivision map, parcel map, or
 23 residential development application.

24 (B) The developable acreage and zoning classification of the
 25 land being transferred are sufficient to permit construction of units
 26 affordable to very low income households in an amount not less
 27 than 10 percent of the number of residential units of the proposed
 28 development.

29 (C) The transferred land is at least one acre in size ~~and~~ *or* of
 30 sufficient size to permit development of at least 40 units, has the
 31 appropriate general plan designation, is appropriately zoned for
 32 development at the density described in ~~this subdivision~~ *paragraph*
 33 *(3) of subdivision (c) of Section 65583.2*, and is or will be served
 34 by adequate public facilities and infrastructure.

35 (D) The transferred land shall have all of the permits and
 36 approvals, other than building permits, necessary for the
 37 development of the very low income housing units on the
 38 transferred land, not later than the date of approval of the final
 39 subdivision map, parcel map, or residential development
 40 application, except that the local government may subject the

1 proposed development to subsequent design review to the extent
2 authorized by subdivision (i) of Section 65583.2 if the design is
3 not reviewed by the local government prior to the time of transfer.

4 (E) The transferred land and the affordable units shall be subject
5 to a deed restriction ensuring continued affordability of the units
6 consistent with paragraphs (1) and (2) of subdivision (c), which
7 shall be recorded on the property at the time of the transfer.

8 (F) The land is transferred to the local agency or to a housing
9 developer approved by the local agency. The local agency may
10 require the applicant to identify and transfer the land to the
11 developer.

12 (G) The transferred land shall be within the boundary of the
13 proposed development or, if the local agency agrees, within
14 one-quarter mile of the boundary of the proposed development.

15 (H) A *proposed* source of funding for the very low income units
16 shall be identified and approved by the local agency not later than
17 the date of approval of the final subdivision map, parcel map, or
18 residential development application.

19 (h) (1) When an applicant proposes to construct a housing
20 development that conforms to the requirements of subdivision (b)
21 and includes a child care facility that will be located on the
22 premises of, as part of, or adjacent to, the project, the city, county,
23 or city and county shall grant either of the following:

24 (A) An additional density bonus that is an amount of square
25 feet of residential space that is equal to or greater than the amount
26 of square feet in the child care facility.

27 (B) An additional concession or incentive that contributes
28 significantly to the economic feasibility of the construction of the
29 child care facility.

30 (2) The city, county, or city and county shall require, as a
31 condition of approving the housing development, that the following
32 occur:

33 (A) The child care facility shall remain in operation for a period
34 of time that is as long as or longer than the period of time during
35 which the density bonus units are required to remain affordable
36 pursuant to subdivision (c).

37 (B) Of the children who attend the child care facility, the
38 children of very low income households, lower income households,
39 or families of moderate income shall equal a percentage that is
40 equal to or greater than the percentage of dwelling units that are

1 required for very low income households, lower income
2 households, or families of moderate income pursuant to subdivision
3 (b).

4 (3) Notwithstanding any requirement of this subdivision, a city,
5 county, or a city and county shall not be required to provide a
6 density bonus or concession for a child care facility if it finds,
7 based upon substantial evidence, that the community has adequate
8 child care facilities.

9 (4) “Child care facility,” as used in this section, means a child
10 day care facility other than a family day care home, including, but
11 not limited to, infant centers, preschools, extended day care
12 facilities, and schoolage child care centers.

13 (i) “Housing development,” as used in this section, means a
14 development project for five or more residential units. For the
15 purposes of this section, “housing development” also includes a
16 subdivision or common interest development, as defined in Section
17 1351 of the Civil Code, approved by a city, county, or city and
18 county and consists of residential units or unimproved residential
19 lots and either a project to substantially rehabilitate and convert
20 an existing commercial building to residential use or the substantial
21 rehabilitation of an existing multifamily dwelling, as defined in
22 subdivision (d) of Section 65863.4, where the result of the
23 rehabilitation would be a net increase in available residential units.
24 The density bonus shall be permitted in geographic areas of the
25 housing development other than the areas where the units for the
26 lower income households are located.

27 (j) The granting of a concession or incentive shall not be
28 interpreted, in and of itself, to require a general plan amendment,
29 local coastal plan amendment, zoning change, or other discretionary
30 approval. This provision is declaratory of existing law.

31 (k) For the purposes of this chapter, concession or incentive
32 means any of the following, but does not include elimination or
33 modification of the public review process:

34 (1) A reduction in site development standards or a modification
35 of zoning code requirements or architectural design requirements
36 that exceed the minimum building standards approved by the
37 California Building Standards Commission as provided in Part 2.5
38 (commencing with Section 18901) of Division 13 of the Health
39 and Safety Code, including, but not limited to, a reduction in
40 setback and square footage requirements and in the ratio of

1 vehicular parking spaces that would otherwise be required that
2 results in identifiable, financially sufficient, and actual cost
3 reductions.

4 (2) Approval of mixed use zoning in conjunction with the
5 housing project if commercial, office, industrial, or other land uses
6 will reduce the cost of the housing development and if the
7 commercial, office, industrial, or other land uses are compatible
8 with the housing project and the existing or planned development
9 in the area where the proposed housing project will be located.

10 (3) Other incentives or concessions proposed by the developer
11 or the city, county, or city and county that result in identifiable,
12 financially sufficient, and actual cost reductions.

13 (l) Subdivision (k) does not limit or require the provision of
14 direct financial incentives for the housing development, including
15 the provision of publicly owned land, by the city, county, or city
16 and county, or the waiver of fees or dedication requirements.

17 (m) Nothing in this section shall be construed to supersede or
18 in any way alter or lessen the effect or application of the California
19 Coastal Act (Division 20 (commencing with Section 30000) of
20 the Public Resources Code.

21 (n) If permitted by local ordinance, nothing in this section shall
22 be construed to prohibit a city, county, or city and county from
23 granting a density bonus greater than what is described in this
24 section for a development that meets the requirements of this
25 section or from granting a proportionately lower density bonus
26 than what is required by this section for developments that do not
27 meet the requirements of this section.

28 (o) For purposes of this section, the following definitions shall
29 apply:

30 (1) "Development standard" includes site or construction
31 conditions, such as height limitations, setback requirements, floor
32 area ratios, onsite open space requirements, and parking ratios,
33 that apply to a residential development pursuant to any ordinance,
34 general plan element, specific plan, or other local condition, law,
35 policy, resolution, or regulation, the application of which would
36 physically preclude the construction of the housing development
37 at the density allowed pursuant to this section.

38 (2) "Maximum allowable residential density" means the density
39 allowed under the zoning ordinance and land use element of the
40 general plan, or if a range of density is permitted, means the

- 1 maximum allowable density for the specific zoning range and land
2 use element of the general plan applicable to the project.
- 3 (p) (1) Upon the request of the developer, no city, county, or
4 city and county shall require a vehicular parking ratio, inclusive
5 of handicapped and guest parking, of a development meeting the
6 criteria of subdivision (b), that exceeds the following ratios:
- 7 (A) Zero to one bedrooms: one onsite parking space.
8 (B) Two to three bedrooms: two onsite parking spaces.
9 (C) Four and more bedrooms: two and one-half parking spaces.
- 10 (2) If the total number of parking spaces required for a
11 development is other than a whole number, the number shall be
12 rounded up to the next whole number. For purposes of this
13 subdivision, a development may provide “onsite parking” through
14 tandem parking or uncovered parking, but not through onstreet
15 parking.
- 16 (3) This subdivision shall apply to a development that meets
17 the requirements of subdivision (b) but only at the request of the
18 applicant. An applicant may request a waiver of parking pursuant
19 to subdivision (d), in addition to the request made pursuant to this
20 subdivision.